



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable Henry C. Kyle
County Attorney
Hays County
San Marcos, Texas

Dear Sir:

Opinion No. 0-3477

Re: Whether a county attorney is entitled to a 10% commission upon amounts paid to reimburse the Texas Unemployment Compensation Commission fund for benefits erroneously paid because of misrepresentation.

In your letter of April 29th requesting an opinion of this Department, you wish to be advised whether a county attorney is entitled to a 10% commission upon amounts collected to reimburse the Texas Unemployment Compensation Commission fund for benefits erroneously paid to an employee because of misrepresentation.

As we construe your letter wherein you refer to Article 355, Vernon's Revised Statutes, 1925, the sole question for us to decide is whether or not the collection of the particular moneys described falls within the provisions of this statute providing the 10% commission. This proposition confronts us because the statutes of this State prescribe the amount of the fees or commissions to be retained by or paid to the various officers as compensation, and we do not find in the Texas Unemployment Compensation Act, Article 5221b-1 et seq., Vernon's Annotated Civil Statutes, any provision authorizing commissions to be retained or paid a county attorney for collecting such moneys in the course of administering said Act.

Hon. Henry C. Kyle, page 2

Article 335, Revised Civil Statutes, 1925, provides:

"Whenever a district or county attorney has collected money for the State or for any county, he shall within thirty days after receiving the same, pay it into the treasury of the State or of the county in which it belongs, after deducting therefrom and retaining the commissions allowed him thereon by law. Such district or county attorney shall be entitled to ten per cent commissions on the first thousand dollars collected by him in any one case for the State or county from any individual or company, and five per cent on all sums over one thousand dollars, to be retained out of the money when collected, and he shall also be entitled to retain the same commissions on all collections made for the State or for any county. This article shall also apply to money realized for the State under the escheat law."

As previously stated, unless the 10% commission inquired about can be retained by virtue of and under the statute quoted, we must answer your question in the negative. In the law-authorizing the existence and operation of the Texas Unemployment Compensation Commission, Articles 5221b-1 to 22, Vernon's Annotated Civil Statutes, we find no authority for the commission to contract for services, the consideration for which is paid out of the benefit or unemployment compensation fund.

It will be noted that the foregoing statute only covers money collected for the State or any county. We construe the word "money" as used to be money belonging to the county or State, and upon its collection, the officer is required by express language to pay same into the "Treasury of the State or of the county in which it belongs" less commissions on the money allowed him by law. In the recent unreported case of Friedman vs. American Surety Company of New York, et al, on a question certified from the Court of Civil Appeals, Tarrant County, Texas, the Supreme Court held that the money collected for such fund is not money belonging to the State, and it is never paid into the State Treasury, but such money is handled as a trust fund with the State Treasurer acting as trustee.

It is, therefore, the opinion of this Department that a county attorney is not entitled to be paid or retain any

Hon. Henry C. Kyle, page 3

commission on moneys collected for and belonging to the Texas
Unemployment Compensation Fund.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Wm. J. R. King
Wm. J. R. King
Assistant

APPROVED JUN 7 1941

Gov. Cullen
FIRST ASSISTANT
ATTORNEY GENERAL

WmK:N

